



**State of New Hampshire
DEPARTMENT OF ENVIRONMENTAL SERVICES**

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July 12, 2002

Buxton Oil Company
P.O. Box 900
Exeter, NH 03833

**NOTICE OF DECISION
ADMINISTRATIVE FINE
NO. AF 2000-034 (WASTE
MANAGEMENT)**

Attn.: Mr. Kenneth Buxton

Dear Mr. Buxton:

As you are aware, by Notice of Proposed Administrative Fine and Hearing No. AF 2000-034 issued May 8, 2000, the Waste Management Division sought administrative fines totaling \$10,000 against Buxton Oil Company for alleged violations of RSA 146-C, the state statute relating to underground storage facilities, arising from activities on property located at 24 Charter Street, Exeter, NH ("the Facility"). Pursuant to RSA 146-C:10-a and based on my review of the evidence presented at the hearing held on this matter on June 3, 2002, I have concluded that the following action is appropriate as set forth below:

A fine in the amount \$5,000 is imposed against Buxton Oil Company for failing to protect the five existing steel USTs at the Facility from corrosion or to permanently close the steel USTs no later than December 22, 1998.

A fine in the amount of \$5,000 is imposed against Buxton Oil Company for failing to protect the five existing steel piping systems at the Facility that routinely contained a regulated substance and are in contact with the soil or other back fill material from corrosion no later than December 22, 1998.

The \$10,000 fine shall be paid within 30 days of the date of the decision.

Fine payments shall be by check or money order payable to "Treasurer-State of NH" and sent to the attention of the DES Legal Unit/Office of the Commissioner, PO Box 95, Concord, NH 03302-0095.

Env-Wm 1401.32 requires existing steel UST systems be protected from corrosion no later than December 22, 1998. Env-Wm 1401.33 requires all existing metal piping that routinely contains regulated substances and is in contact with the soil to be protected from corrosion no later than December 22, 1998. The purpose of these rules is to address the potential for a release of regulated substances to the environment. Buxton Oil Company is liable for not protecting from corrosion or permanently closing the UST systems at the Facility in a timely manner to prevent the potential contamination of New Hampshire's environment. Furthermore, by delaying the removal of the UST systems past the deadline, and continuing to use the tanks, Buxton Oil Company obtained an unfair financial advantage over competitors who did comply.

This decision is based on the following findings and conclusions:

Kenneth Buxton ("Buxton") is the owner of five underground storage tank ("UST") systems located at Buxton Oil Company ("Buxton Oil"), Exeter, NH ("the Facility") and identified as UST #0-112777.

- 2 RSA 146-C:2 prohibits the owner or operator of a UST facility from discharging oil from such facility into the land, groundwater, or surface water of New Hampshire.
- 3 Env-Wm 1401.32 requires existing USTs to be protected from corrosion or be permanently closed no later than December 22, 1998.
- 4 Env-Wm 1401.33 requires existing metal piping to be protected from corrosion no later than December 22, 1998.
- 5 In February 1986, Buxton registered the five UST systems located at the Facility
- 6 By letter dated April 9, 1996, the DES Waste Management Division ("the Division") informed Buxton Oil that the USTs located at the Facility were required to be upgraded or permanently closed by December 22, 1998.
- 7 By postcard dated February 1997, the Division reminded Buxton Oil that the USTs were to be closed by December 22, 1998.
- 8 In December 1997, the Division mailed a survey to Buxton Oil requesting, in part, when Buxton would close the USTs and if he needed funding to close the systems.
- 9 Buxton returned the survey in early January 1998 and indicated that he would close the systems by September 1998 and that he did not require funds for the closure.
- 10 By letter dated April 22, 1998, Buxton Oil notified DES that it would remove the tanks in the summer of 1998 and replace them with one 20,000 gallon tank and would contact DES prior to tank removal.

By postcard dated September 1998, the Division reminded Buxton Oil that the tanks must be closed by December 22, 1998.
- 12 In February 1999, DES issued Administrative Order by Consent No. WMD 99-15 ("the Order") to Buxton Oil that ordered Buxton Oil to permanently close the USTs by June 30, 1999 and to pay a \$500 penalty for each system that was not closed by June 30th. Buxton signed the Order.
- 13 Buxton Oil failed to close the tanks by June 30th or pay the \$2,500 penalty for the five tanks that were not closed.
- 14 On May 4 and 5, 2000, Buxton Oil's contractor, C.A.B.Services, Inc. "CAB") removed the tanks.
- 15 On May 10, 2000, CAB informed DES staff that it discovered some soil contamination while removing the tanks. CAB removed the contaminated soil.
- 16 On July 28, 2000, the Division received the closure report for the Facility indicating that the tanks had been closed.
- 7 The UST systems at the Facility are steel and do not have corrosion protection.

18. The UST systems at the Facility had not been permanently closed by December 22, 1998.
19. Buxton Oil violated Env-Wm 1401.32 by failing to protect the existing steel USTs at the Facility from corrosion or to permanently close the USTs no later than December 22, 1998.
20. For a violation of Env-Wm 1401.32, Env-C 607.03(e) authorizes a fine of \$1,000 per violation for a total fine of \$5,000.
21. Buxton Oil violated Env-Wm 1401.33 by failing to protect the existing steel piping systems at the Facility that routinely contained a regulated substance and are in contact with the soil or other back fill material from corrosion no later than December 22, 1998.
22. For a violation of Env-Wm 1401.33, Env-C 607.03(f) authorizes a fine of \$1,000 per violation for a total fine of \$5,000.
23. None of the factors identified in Env-C 601.09(c)(1) through (4) apply to reduce the amount of fine that can be imposed for the violations noted in #19 and #21 above.

Buxton Oil Company violated Env-Wm 1401 by failing to protect or permanently close the UST systems at the Facility by December 22, 1998. Thus, for the reasons discussed above, I have concluded that the \$10,000 fine imposed against Buxton Oil Company is appropriate.

Any party aggrieved by this decision may file a motion for reconsideration within 30 days of the date of this decision, in accordance with NH RSA 541 and Env-C 206 (copy enclosed).

Very truly yours,


George Dana Bisbee
Assistant Commissioner

Enclosure

cc: Philip J. O'Brien, Ph.D, Director, WMD
Lynn A. Woodard, P.E., DES
Thomas R. Beaulieu, DES
Mark Harbaugh, DES Enforcement Attorney
Gretchen Rule, DES Legal Unit
Susan Weiss Alexant, DES Hearings and Rules Attorney